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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 127

PRINTED REPRODUCTION OF TYPEWRITTEN BRIEFS FILED IN THE MICHIGAN SUPREME COURT BY:

1. PETITIONER IN THE STATE COURT IN SUPPORT OF THE STATE COURT PETITION FOR CERTIORARI.

2. RESPONDENT IN THE STATE COURT IN OPPOSITION TO THE STATE COURT PETITION FOR CERTIORARI.

INTERSTATE BRIEF & RECORD CO., 942 BEAUBIEN ST., DETROIT 26, MICHIGAN

STATE OF MICHIGAN

IN THE SUPREME COURT

RICHARDS GREENFIELD, INC., a Michigan corporation,

Plaintiff,

v.

HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A. F. of L.; HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705; CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234; MAX GAZAN, GEORGE ASHER, JAMES MACERONI, HARVEY MORRIS, ROGER FOSTER, JOHN DOE and RICHARD ROE,

Defendants.

No. 45,387.

MEMORANDUM BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

QUESTIONS:

I. Does a Chancery Court have jurisdiction over several parties charged with constructive contempt for violation of an injunction committed outside of the view and presence of the Court under Michigan Statutes Annotated, Sec. 27.513, where no proof of service of any process is filed in the cause?

The Court said, Yes.

The Petitioners say, No.

II. Does a Chancery Court aquire any jurisdiction to issue an order to show cause why several parties, some of whom are not even parties to the cause, upon a vague and general petition verified upon information and belief?

The Court said, Yes.
The Petitioners say, No.

III. Does a Chancery Court have jurisdiction to punish parties for alleged contempt of court committed outside of the view and presence of the Court without service of any affidavit, rule, petition, citation, or order to show cause upon such persons?

The Court said, Yes.
The Petitioners say, No.

IV. Does a court have jurisdiction to punish parties for contempt not in the view and presence of the court in a proceeding in which said parties are not named as parties defendant nor as respondents in an order to show cause for such contempt?

The Court said, Yes.
The Petitioners say, No.

V. Does a Court have jurisdiction to punish organized labor unions for alleged contempt arising out of actions of its members committed outside of the view and presence of the Court, when the convictions of said individual members for said alleged actions are illegal and void?

The Court said, Yes.
The Petitioners say, No.

VI. Did the Court err in refusing to strike testimony of an oral and sound-recorded nature in violation of their constitutional rights of free speech?

The Court said, No.
The Petitioners say, Yes.

VII. Did the Court err in ordering the termination of all picketing and the removal of all union personel from the premises where a bona fide labor dispute was in progress, thus depriving the parties of their constitutional right of free speech?

The Court said, No.
The Petitioners say, Yes.

ARGUMENT

I.

DOES A CHANCERY COURT HAVE JURISDICTION OVER SEVERAL PARTIES CHARGED WITH CONSTRUCTIVE CONTEMPT FOR VIOLATION OF AN INJUNCTION COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT UNDER MICHIGAN STATUTES ANNOTATED, SEC. 27.513, WHERE NO PROOF OF SERVICE OF ANY PROCESS IS FILED IN THE CAUSE?

This application for a Writ of Certiorari seeks to review the conviction of two organized labor unions and four individual members thereof for alleged contempt of court not in the view and presence of the Court. There is not one single element or allegation of any contempt within the presence of the Court. The applicable statute in these proceedings therefore is *Michigan Statutes Annotated, Sec. 27.513,* which reads as follows:

> "27.513. Same; misconduct not in presence *of court.* Sec. 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena. (C. L. '29, §13912; C. L. '15, §12270)."

The records in the cause and the calendar entries of the trial court show that no proof or affidavit of service of any petition, affidavit, order to show cause, citation, or attachment upon any of the parties was ever filed.

The statute as to such affidavits and service upon the parties speaks for itself. No authority is required as to the strict construction of a penal statute. Strict construction is likewise essential in contempt proceedings wherein defendants are not entitled to jury trials.

II.

DOES A CHANCERY COURT ACQUIRE ANY JURISDICTION TO ISSUE AN ORDER TO SHOW CAUSE WHY SEVERAL PARTIES, SOME OF WHOM ARE NOT EVEN PARTIES TO THE CAUSE, UPON A VAGUE AND GENERAL PETITION VERIFIED UPON INFORMATION AND BELIEF?

In the instant case an attempt to comply with the statute was undertaken by the filing of a petition for an order to show cause. This petition was verified by Sidney Smith upon information and belief. In *Campbell v. Judge of Recorder's Court,* 244 Mich. 165, at page 167, this Court stated:

> "The statute (3 Comp. Laws 1915, §12270) requires in case of misconduct not committed in the immediate view and presence of the court, that the court before proceeding 'shall be saitsfied by due proof by affidavit of the facts charged.'
>
> "In *Montgomery v. Muskegon Circuit Judge,* 100 Mich. 436, it is said that the—'charges must be supported by positive statments in affidavits made by persons having knowledge of the facts,—*that statements on information and belief are not sufficient.*' "

The vague and general nature of the petition speaks for itself. From the petition it is impossible to determine which defendant is accused of what act of contempt. The generality of the petition is illustrated by the fact that the order to show cause issued thereon names a number

of alleged contemnors who were not even parties to the cause, and that, of the six parties convicted therein, two of the petitioners herein were not even named as defendants in the cause nor respondents to the order to show cause.

To further attempt to comply with the statute, an affidavit was attached to the petition which fails entirely to associate the alleged contempt with any of the petitioners herein. The affidavit was so irrelevant to the petitioners herein that the Trial Judge commented in his formal opinion that the incident therein outlined was not the concern of this particular hearing.

We repeat that under the statute such an affidavit is jurisdictional and a total variance between the affidavit and the sentences for contempt is fatal.

As to a charge of contempt based upon incidental facts which did not occur in the presence of the Court, this Court stated in *In re Gilliland*, 284 Mich. 604, at page 613, as follows:

> "The judge unquestionably has the right summarily to punish one for illegal practice of the law in his presence. However, when the proof on the charge of contempt for illegal practice partly depends upon practices which took place outside of the court and prior to the hearing, the contemner is entitled first to have proper charges preferred against him so that he may answer them and prepare his defense. This was not done and, therefore, the conviction as to this contempt is set aside."

To the same effect, *In re Ventchell*, 279 Mich. 690 wherein this Court stated, at page 691:

"The alleged violation of the restraining order was not committed in the immediate view and presence of the court and therefore 3 Comp. Laws, 1929, Sec. 13911, is inapplicable.

"Sections 13912 and 13914, 3 Comp. Laws 1929, are respectively as follows:

> " 'When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena.'
>
> " 'In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct.'

"Section 13912, as quoted, provides the foundation for punishment for contempts not committed within the immediate view and presence of the court. Proof of the alleged misconduct must be submitted by affidavit. The court, upon being satisfied from said affidavit of the commission of the misconduct, may thereupon issue an order for the accused to show cause why he should not be punished therefor, or issue an attachment to arrest the accused. 3 Comp. Laws 1929, Sec. 13914.

"In the instant case there was a total absence of compliance with the statutory provisions. The requirement that an affidavit be presented setting forth the alleged misconduct was ignored. Neither was an order to show cause nor an attachment to

arrest issued. Under the facts it must be held that petitioners were deprived of their liberty without due process of law. *In re Wood*, 82 Mich. 75; *In re Smilay*, 235 Mich. 151.

"The order of contempt is set aside and vacated and petitioners discharged."

In *Cooks v. United States*, 267 U. S. 517, the leading case on due process of law in constructive contempt cases, we find the following language:

"The rule should have contained enough to inform the defendant of the nature of the contempt charged. See *Hollingsworth v. Duane*, Wall. Sr. 141, Fed. Cas. No. 6,617. Without any ground shown for supposing that a rule would not have brought in the alleged contemners, it was harsh under the circumstances to order the arrest."

As to the necessity and requirements of such affidavits, we will refer in an Amended Brief to:

2 A. L. R. 225;
118 A. L. R. 155.

III.

DOES A CHANCERY COURT HAVE JURISDICTION TO PUNISH PARTIES FOR ALLEGED CONTEMPT OF COURT COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT WITHOUT SERVICE OF ANY AFFIDAVIT, RULE, PETITION, CITATION, OR ORDER TO SHOW CAUSE UPON SUCH PERSONS?

As has been hereinbefore stated, the record in this cause contains no affidavit of any service of any process of any kind upon any of the petitioners. In the petition for Writ of Certiorari filed herein the petitioners Chefs,

Cooks, and Pastry Chefs Local Union #234, Pearl Craig, and George Asher, show that they were not served with any papers. The fact appears that Pearl Craig and Roy Stringari were not even named in the rule or order to show cause.

This Court stated *In re Na Lepa,* 298 Mich. 310, at page 312, as follows:

> "We have carefully examined the record and briefs in this cause and find that no charge was filed against petitioner. He was not informed of the nature of the charge against him. He was not served with any process or given an opportunity to defend himself. In the case at bar, a part of the transaction charged as contemptuous transpired 'in the immediate view and presence of the court,' but other transactions occurred outside the hearing of the court. The admitted and known facts committed in the presence of the court were not such as would constitute a violation of 3 Comp. Laws 1929, §13911 (Stat. Ann. §27.512), nor was the procedure such as to comply with 3 Comp. Laws 1929, §13912 (Stat. Ann. §27.513). Under the facts, it must be held that petitioner was deprived of his liberty without due process of law,
>
> "The order of contempt must be set aside and vacated, and the petitioner discharged without prejudice. No costs."

To the same effect, *In re Smilay,* 235 Mich., at page 156:

> "We must conclude that plaintiff was convicted and deprived of his liberty without due process of law. The offense with which he was charged was not committed in the presence of the court. He is therefore entitled to be informed of its nature, and to be given time to prepare his defense, and secure the assistance of counsel. He denied he had vio-

lated the order of the court, and he could not be found guilty until the issue of fact thus made had been disposed of. He was entitled, also, to produce witnesses in his own behalf.

"His conviction was too peremptory, and he was deprived of constitutional rights which void the entire proceedings. *Cooke v. United States,* 267 U. S. 517 (45 Sup. Ct. 390)."

The entire subject of due process of law in contempt proceedings was very thoroughly review by the United States Supreme Court in *Re Oliver,* 333 U. S. 257, in which the Court said:

"Except for a narrowly limited category of contempts, due process of law as explained in the Cooke Case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke case, that the accused be accorded notice and a fair hearing as above set out."

IV.

DOES A COURT HAVE JURISDICTION TO PUNISH PARTIES FOR CONTEMPT NOT IN THE VIEW AND PRESENCE OF THE COURT IN A PROCEEDING IN WHICH SAID PARTIES ARE NOT NAMED AS PARTIES DEFENDANT NOR AS RESPONDENTS IN AN ORDER TO SHOW CAUSE FOR SUCH CONTEMPT?

This question is presented separately because it involves the rights of some of the parties convicted in this cause who were not parties to the original proceedings and were not even named in the so-called order to show cause. Pearl Craig was never named in these proceedings in any capacity other than in her appearance as a witness. She was never served with any form of process. If she had even seen any of the pleadings or documents in the case she would have seen nothing but a chancery entitlement. There was nothing in any of these proceedings to place her on notice that she was being tried for constructive contempt. Certainly under these circumstances there was no compliance with the rules laid down for due process of law under the Fourteenth Amendment to the Constitution of the United States.

> *Cooke v. United States*, 267 U. S. 517;
> *In re Oliver*, 333 U. S. 257.

The third headnote in *Gompers v. Buck's Stove & R. Co.*, 221 U. S. 418, is pertinent in this connection;

> "A punitive sentence appropriate only to a proceeding at law for criminal contempt where the contempt consisted in doing that which had been prohibited by an injunction could not properly be imposed in contempt proceedings which were instituted, entitled, tried, and, up to the moment of sentence, treated, as a part of the original cause of equity."

In the body of the opinion by Mr. Justice Lamar we find the following language:

> "In the first place the petition was not entitled 'United States v. Samuel Gompers, et al.' or 'In re Samuel Gompers, et al.,' as would have been proper, and, according to some decisions, necessary, if the proceedings had been at law for criminal contempt. This is not a mere matter of form, for manifestly every citizen, however unlearned in the law, by mere inspection of the papers in contempt proceedings ought to be able to see whether it was instituted for private litigation or for public prosecution, whether it sought to benefit the complainant or vindicate the court's authority. He should not be left in doubt as to whether relief or punishment was the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge, and not a suit. *United States v. Cruickshank*, 92 U. S. 542, 559, 23 L. ed. 588, 593."

V.

DOES A COURT HAVE JURISDICTION TO PUNISH ORGANIZED LABOR UNIONS FOR ALLEGED CONTEMPT ARISING OUT OF ACTIONS OF ITS MEMBERS COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT, WHEN THE CONVICTIONS OF SAID INDIVIDUAL MEMBERS FOR SAID ALLEGED ACTIONS ARE ILLEGAL AND VOID?

The two petitioning organized labor unions, Local #705 and Local #234, submit that in addition to the foregoing legal defects in the jurisdiction and procedure of the Trial Court in holding them guilty of criminal contempt, such contempt charge against them is necessarily based entirely upon the actions of their members. Consequently, it must follow that if the convictions of their respective

members are fatally defective, as herein set forth, then the convictions of the organizations are likewise fatally defective. This question will be amplified in an amended brief to be filed herein upon the date of the hearing.

VI.

DID THE COURT ERR IN REFUSING TO STRIKE TESTIMONY OF AN ORAL AND SOUND-RECORDED NATURE IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS OF FREE SPEECH?

VII.

DID THE COURT ERR IN ORDERING THE TERMINATION OF ALL PICKETING AND THE REMOVAL OF ALL UNION PERSONNEL FROM THE PREMISES WHERE A BONA FIDE LABOR DISPUTE WAS IN PROGRESS, THUS DEPRIVING THE PARTIES OF THEIR CONSTITUTIONAL RIGHT OF FREE SPEECH?

For the purposes of brevity, Questions VI and VII will be discussed under one heading, as they both involve questions of freedom of speech under the First Amendment to the Constitution of the United States. The basic right to picket, to advise customers of the relationship between employer and employee, to attempt to induce customers not to patronize, to publicize the dispute, and similar rights are established in *Thornhill v. Alabama*, 310 U. S. 88, under the right of free speech as constitutionally guaranteed. To the same effect is the case of *Carlson v. California*, 310 U. S. 106.

In *Cafeteria Employees v. Angelos*, 320 U. S. 293, the right of workers engaged in a bona fide labor dispute are outlined in greater detail. The following language of Mr. Justice Frankfurter is pertinent to the present questions:

"And to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies—like 'unfair' or 'fascist'—is not to falsify facts.";

and finally as follows:

"The present situation is thus wholly outside the scope of the decision in *Milk Wagon Drivers Union v. Meadowmoor Dairies,* 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552, 132 A. L. R. 1200. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but of the very texture and process of the enjoined picketing. But we also made clear 'that the power to deny what otherwise would be lawful picketing derives from the power of the states to prevent future coercion. Right to free speech in the future cannot be forfeited because of disassociated acts of past violence.' 312 U. S. at 296, 85 L. Ed. 842, 61 S. Ct. 552, 132 A. L. R. 1200. Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

RELIEF

It is therefore respectfully submitted hat Writ of Certiorari should issue and the relief prayed in the petition therefor be granted.

Respectfully submitted,

Sgd. GEORGE BRETT SHAEFFER,
Attorney for Petitioner,
2480 Penobscot Building,
Detroit 26, Michigan.

STATE OF MICHIGAN

IN THE SUPREME COURT

RICHARDS GREENFIELD, INC., a Michigan corporation, *Plaintiff,* v. HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A. F. of L.; HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705; CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234; MAX GAZAN, GEORGE ASHER, JAMES MACERONI, HARVEY MORRIS, ROGER FOSTER, JOHN DOE and RICHARD ROE, *Defendants.*	No. 45,887.

PLAINTIFF'S MEMO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In Petitioners' Memo Brief they propound Seven (7) questions numbered I through VII. To each of these questions they state "The Court said 'Yes' ". "The Petitioners say, 'No' ". The plaintiff does not agree at all that from the record these questions are properly the questions involved in this proceeding. The Petitioners have not stated the facts accurately as premises for some of the questions and have confused the issues as to others.

However, without conceding that the questions as framed by petitioners are properly the issues involved, plaintiff's Brief will deal with the matters referred to in the several questions framed by the petitioners.

QUESTION I

Framed by Petitioners

This question is framed by Petitioners as if the *Proof of Service* is the only factor which determines the jurisdiction of the Court over these petitioners. The Order to Show Cause (Petitioners' Exhibit "E") specifically provides:

> "It is further ordered that a copy of this order to show cause be served upon said defendants, their officers, agents, employees, pickets and confederates, by serving a copy thereof upon the offices of said defendants Hotel & Restaurant Employees' Local No. 234, and upon the office of their attorney, Leon Cousens, Esquire, on or before midnight, September 10, 1951."

It is nowhere denied that service of the Order to Show Cause upon these Petitioners was made in accordance with the above direction of the Circuit Court. Moreover, Leon Cousens, who was the attorney of record at that time for the two defendant unions, upon whom had been served a copy of the sworn petition and sworn affidavit, and order, entered his appearance and filed the answer of the two defendant unions in the files and records of the Circuit Court (Petitioners' Exhibit "F"). Petitioner Max Gazan entered a special appearance by Moe Wolfgang, his attorney, and later changed it to a general appearance and

adopted the answer of the two Local Unions as his own, in open Court, upon the record of the hearing.

The other Petitioners in this cause, George Asher and Pearl Craig, together with many other officers, employees, business agents, picket captains and pickets, appeared in person in open Court in response to the Order to Show Cause, although no written appearance was entered for any of them and they remained in Court, saw and heard the witnesses against them, produced witnesses in their behalf, and took the witness stand themselves to explain, deny or justify their conduct which the plaintiff claimed and the Court found, after hearing testimony of witnesses over a period of nearly three (3) months, was in violation of law and of the Court's injunction.

It is elementary that no Proof of Service needs to be filed where the respondent enters his appearance either in person or by attorney, and that by appearing in response to an order to Show Couse he waives service of the Order, or the filing of a Proof of Service of such Order. The only essential requirement is that the respondent receive reasonable notice of the charges made against him and that he have a reasonable opportunity to meet them by way of defense or explanation. *Cooke v. United States,* 267 U. S. 517, 536, in which Chief Justice Taft said:

> "When the contempt is not in open Court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument. The exact *FORM of the procedure in the prosecution of such contempts is not important.* The Court in *Randall v. Brigham,* 7 Wall. 523, 540, in speaking of what was necessary in proceedings again an attorney at law for malpractice said:

" 'All that is requisite to their validity is that, when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. *The manner in which the proceeding shall be conducted, so that it shall be without oppression or unfairness IS A MATTER OF JUDICIAL REGULATIONS.'*

"*Due process of law* therefore, except of that committed in open court, requires that the accused *should be advised of the charges and have a reasonable opportunity* to meet them by way of *defense or explanation.* We think this includes the assistance of counsel if requested, and the right to call witnesses to give testimony relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." (Italicizing ours.)

QUESTION II

Framed by Petitioners

This entire cause proceeds on the wholly erroneous and unfounded promise that the Petition on which the contempt proceedings were based *"was verified by Sidney Smith upon information and belief".* Examination of this sworn Petition discloses that it was the positive personal statements of fact by Sidney Smith and NOWHERE in the entire petition is there any reference to "information and belief"—unless Petitioners refer to the statement in the jurat "that the same is true of *HIS OWN KNOWLEDGE,* except as to those matters stated to be upon information and belief." It is respectfully submitted again that no-

where in the petition is it "therein stated to be upon information and belief"!

If perhaps, the Petitioners were laboring under the erroneous impression that the statements sworn to by Mr. Smith as a basis for the Order to Show Couse for Contempt were in the *FORM OF VERIFIED PETITION* rather than in the *FORM OF AFFIDAVIT* objection is without merit. In *Campbell v. Judge of Recorders Court,* 244 Mich. 165, this Honorable Court said, at *page 168:*

> "There is objection that the facts here are set forth in the form of verified petition rather than in the form of affidavit. The objection is technical, and we think, without substance. *In re McHugh,* 152 Mich. 505."

Judge Moynihan was "satisfied by due proof", as the *Statute, Sec. 27.513, Mich. Stat. Ann.,* sets forth, by the sworn petition of Sidney Smith, that the facts stated in said sworn petition, which was not upon information and belief, justified the issuing of the Order to Show Cause for Contempt.

On pages 3 and 4 of their Brief, Petitioners quote from *Montgomery v. Muskegon Circuit Judge,* 100 Mich. 436. We have no quarrel with this quotation but respectfully submit it does not apply to the case at Bar because the petition in this case was *NOT* on "information and belief". *In Campbell v. Judge of Recorders Court,* 244 Mich. 165, this Honorable Court itself, *pages* 167, 168, repeated the same quotation from *Montgomery v. Muskegon Circuit Court Judge, supra,* but also added, on *page 168:*

> "and it was also held in that case respecting contempts *that the decision of the trial judge—*
>
> > 'As to whether there was sufficient basis for issuing the order to show cause *can only be re-*

versed in case of a total absence of a showing of facts justifying such action.' (Italicizing ours.)

"A chief reason for the rule that the affidavit must be made positively and as of knowledge is that the public be entitled to the protection afforded by the penalties imposed for false swearing. *2 A. L. R.* 226."

In the annotations to *2 A. L. R., page 225,* referred to by this Honorable Court in the *Campbell case, supra,* it is said:

"It is well settled that cases of contempt not committed in the immediate view or presence of the Court must be brought to the attention of the Court by a statement of the facts by persons who witnessed them or have knowledge of them *(Sec. 6 R. C. L. Title: Contempt, page 531),* and the rule seems to be uniformly recognized that this statement must be made under oath, either *in the form of an affidavit or by some other sworn statement."* (Citing many cases.) (Italicizing ours.)

Moreover, it is stated at *2 A. L. R.,* page 236, that:

"It has been held that a failure to object in proper time to a petition in contempt proceedings, on the ground that it is not sworn to, amounts to a waiver of the defect and the contemnor may not later object to the jurisdiction on that ground. *Sona v. Aluminum Castings Co.,* 214 Fed. 936."

To the same effect are in re *Odum* 133 N. G. 250; *Atchison T & SFR Co., v. State,* 35 Okla. 532; *State v. Frew,* 24 W. Va. 416 and re *Cheeseman,* 49 N. J. L. 115. In these cases it is uniformly held that:

"Where the accused answers without objecting to the absence of a preliminary affidavit, he waives his right."

and:

> "That the defect if any, was waived by answering to the information without moving to quash or set it aside."

and:

> "The contemnor waived any rights he might have had by *being sworn at his request, and making answer in that form to the charge.*" (Italicizing ours.)

To the same effect is the annotation in *118 A. L. R.* at page 156, which cites *Campbell v. Judge of Recorder's Court,* 244 Mich. 165, as authority for this statement.

It is submitted that the cases cited on pages 4, 5 and 6 of Petitioners' Brief do not at all support their contention. In *re Ventchell,* 279 Mich. 690 it is stated:

> "The petitioneres were *summarily* brought before the Circuit Court and adjudged to be in contempt thereof for violation of said restraining order and committed to the County Jail for a period of thirty days each. Said judgment was imposed without presentation to the court of an affidavit reciting the alleged acts of misconduct, without Order to Show Cause, or without attachment having been issued."

In the case at Bar, a lengthly sworn petition was filed which satisfied the trial judge so that he issued an Order to Show Cause which was served upon all the petitioners in the manner directed therein. All the Petitioners appeared in person and by attorneys and the defendant unions, without any question of doubt, acting on behalf of themselves and the officers, agents, pickets, business agents, etc., including the three individual Petitioners, filed sworn written answers as did Petitioner Max Gazan, who, in effect, adopted these sworn written answers. The

other two Petitioners, filed sworn written answers as did Petitioner Max Gazan, who in effect, adopted these sworn written answers. The other two Petitioners appeared in person at the time and place designated for the hearing on the Order to Show Cause, were fully apprised in open court through weeks of hearings with what they and their fellow officers, business agents, pickets and picket captains were charged, heard these charges against them from the witness stand, took the witness stand to deny, explain or justify their violations of the court's injunction and under the direction of the three attorneys provided by the defendant unions, produced scores of witnesses during this lengthy hearing. For Petitioners to cite the *Ventchell case, supra*, with its *summary* conviction and imprisonment, is to do violence to logic and justice.

QUESTIONS III AND IV

Framed by Petitioners

That questions III and IV raise substantially the same issue, to-wit: the query as to whether persons who are not named as parties defendant, nor by specific name as respondents, can be held accountable to the charge of contempt. These questions apply solely to George Asher and Pearl Craig. These questions ignore the facts of the case at bar, namely that George Asher was a member of Local Union #705, a business representative thereof and a picket captain at plaintiff's place of business. Pearl Craig was a member, employee and a picket of Local Union #705, whose conduct the testimony disclosed, and Judge Moyihan found, to be especially vicious and reprehensible. Both of them were referred to and included in the petition for

Order to Show Cause as "officers, agents, employees pickets and confederates" of the defendant unions and the Order to Show Cause specifically designated that service upon them of the petition and order to Show Cause was to be effected by service upon the unions and Leon Cousens, their attorney, In response to this Order to Show Cause, these two Petitioners, George Asher and Pearl Craig, along with a horde of other business representatives, pickets, picket captains and officers of defendant unions, appeared freely and voluntarily, in open court, on the return date of said Order to Show Cause and on each adjournment thereof, heard specifications of the charges made against them of violations of the injunction; sat through weeks of hearings, counselled and conferred with three attorneys provided by the unions; heard scores of witnesses from the witness stand describe in minutest detail their and their confederates' specific acts which were in violation of law and of the injunction; produced witnesses to explain, deny or justify their conduct, and under the direction of the three attorneys provided by the union, each of them took the stand for a period of several days to deny, explain or justify their conduct which it was charged was illegal and contemptuous. Both of them had been present also in court during the application for the injunction, and were fully aware of its terms, provisions and conditions.

Both of them, George Asher and Pearl Craig, testified also that after the injunction was signed it had been read and explained to them by their attorney, Leon Cousens and by the picket captains on the picket line, respectively.

George Asher and Max Gazan were named specifically as parties defendant in the original suit; Pearl Craig was

included in the terms of the injunction which was directed to "the officers, agents, employees and pickets of said defendant unions". The contention of Petitioners in question III and IV that the court did not have jurisdiction over Pearl Craig and George Asher to punish them for contempt on the ground that the former was not named as a party defendant or that both of them were not personally served with copies of the petition and Order to Show Cause is untenable.

In 12 American Jurisprudence, page 407, it is said:

> "The violation or disobedience of an injunction order issued by a court having jurisdiction in the matter, when committed by a party to the injunction suit or by a third party, having actual notice, is a contempt of court and is punishable as such by the tribunal issuing the order; summary punishment therefor is not prohibited by the constitutional right to trial by jury. This rule is not confined to parties to the injunction. One who is not a party to the injunction suit, but who is within the class of persons whose conduct is intended to be restrained or who acts in concert with a party litigant or with a third party, is guilty of contempt. Persons who act as agents, servants, associates, or confederates of parties to the injunction suit may be held guilty of contempt in doing acts forbidden by the injunction order."

In *15 A. L. R.* at page 389 are listed numerous cases in support of the statement that:

> "There are numerous cases which hold that persons though not parties to the injunction suit who act as the agents or servants or associates or confederates of parties to the suit in violating the injunction, are guilty of contempt."

In *Re McHugh*, 152, Mich. 505, two attorneys had failed to appear in Recorders Court for the City of Detroit to represent their client, who was charged with murder, upon the trial date, alleging that they were too ill to come into court. It developed that both of them had packed their suitcases and gone to Canada. An attachment was issued for their arrest for contempt, (p. 510):

> "and no petition or affidavit was presented to the court as a foundation for the proceedings • • • The respondents voluntarily appeared in court and were given the same opportunity to make their defense that they would have had upon the filing of a petition or affidavit and the issuance of an order to show cause. They were not seized upon the capias but came directly from a foreign country into the court and voluntarily submitted to its jurisdiction. It should require no argument to show that they had waived all irregularities in initiating the proceedings. The following authorities are directly in point: *Moore's Case*, 63 N. C. 397, *Hawkins v. State*, 125 Ind. 573; *In re Savin*, 131 U. S. 267; *Randall v. Brigham*, 7 Wall. (U. S.) 523, 540."
>
> "In *Randall v. Brigham* it is said:
>
> 'He (the respondent) was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself. It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon

its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceedings shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.'

"The court in *Re Savin, supra*, quoted the above language with approval, and said:

'So, in the present case, if the appellant was entitled of right, to purge himself under oath, of the contempt, that right was not denied to him; for it appears from the proceedings in the district court, made part of the petition for *habeas corpus*, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf, and had full opportunity to make his defense.

'Our conclusion is that the district court had jurisdiction of the subject matter, and of the person, and that irregularities, if any, occurring in the mere conduct of the case, do not affect the validity of its final order.'

"If the respondents had refused to appear in court, as was the case in *Re Wood*, 82 Mich. 75, or if they had been arrested upon the capias and had denied the jurisdiction of the court for the reason that no affidavit or petition was presented to the court setting forth the facts, the respondents would have been in position to raise this question, but their conduct waived it. They voluntarily placed them-

> selves in precisely the same position as they would have been if the proceeding had been such as they now contend was necessary."

In *re McHugh, supra,* is quoted with approval in the Campbell case hereinabove cited, 244 Mich. 168.

The cases cited by Petitioners' Brief, pages 7, 8 and 9 are not in point:

In *re NaLepa,* 298 Mich. 310 was a case in which the lower court in his return admitted that he had been in error in punishing the Petitioners summarily as if the offense had been committed in the presence of the court and no opportunity was afforded him to say a word in his defense.

In *re Smilay,* 235 Mich. 151, the petitioner claimed:

> "that the conviction and sentence were erroneous because there was no proper affidavit upon which to base an Order to Show Cause; that he was given no notice as provided by statute; that he denied violating the order but was confronted by no witnesses who testified he had; that he was not represented by counsel nor given time to employ one; that he did not know his rights, nor was he advised concerning them or given time to prepare his defense; in short, that he was sentenced without due process of law."

In *re Oliver,* 333 U. S. 257, petitioner was a grand jury witness in Michigan who claimed that he had been denied an opportunity to even learn what the charges against him were, to be confronted with witnesses against him, or time to obtain advice and defense by counsel.

It is respectfully submitted that the mere reference to the facts of the three cases cited in Petitioners' Brief makes it immediately apparent that the facts of the case

at Bar are entirely different. After personally, freely and voluntarily appearing in open court with the three attornys provided by the defendant unions upon the return day and each adjournment of the Order to Show Cause; where the trial court leaned over backward to give the Petitioners so much of the valuable time of the courts as to permit them to summon scores of witnesses over a period of time of nearly three months this hearing consumed. The Petitioners can hardly be heard to say they were not given the time or opportunity to present a defense nor to say that they were not cognizant of the fact that they, and their confederates were individually being charged with violation of the court's injunction. The contention which they now indulge that they were present in court merely as witnesses for the unions or that the three attorneys with whom they were counseling or cooperating did not represent them individually, but merely represented the unions, does violence to the facts. The present counsel for the Petitioners, George Brett Shaeffer, Esquire, was the attorney formally representing the local union to which these two Petitioners belong. Mr. Shaeffer, learned counsel that he is, certainly cannot be heard to say that the Order to Show Cause did not include these two Petitioners, George Asher and Pearl Craig, in the language of the Order:

> "It is hereby ordered that the defendant Hotel and Restaurant Employees Local Union No. 705, and the Chefs, Cooks, Pastry Chefs Local Union No. 234, and their officers, agents, employees, pickets and confederates * * * BE AND APPEAR before this Honorable Court on Friday, September 14, A. D. 1951, at 2:00 * * * to show cause, if any they have, why the defendants and their individual officers, agents, employees, pickets and confederates

> should not be punished for contempt of court in disobeying and violating the injunction of this Honorable Court * * *," etc.

It is respectfully submitted it would be putting a severe strain upon the credulity of this Honorable Court for petitioners to claim that throughout the months which this hearing consumed and while petitioners' present counsel, George Brett Shaeffer, Esquire, and his co-counsel, were in constant conference with these Petitioners and other officers, business agents, picket and picket captains, they did not have an opportunity to advise these Petitioners that they were being personally charged with violation of the court's injunction.

The attention of this Honorable Court is respectfully called to the following quotation from one of the cases cited on page 7 of Petitioners' Brief: In *re Oliver*, 333 U. S. 257, *at page 273*, where the court said:

> "Failure to afford petitioner a *reasonable opportunity* to defend himself against the charge * * * was a denial of due process of law. A person's right to reasonable notice of a charge against him and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence and these rights include as a minimum a right to examine the witnesses against him, to offer testimony, and to be represented by counsel."

No fair reading of the record in this case where Circuit Judge Joseph A. Monyihan, setting aside all other business of the court, gave unstintingly of his time and patience to afford these Petitioners their day in court, full and ample opportunity "to examine the witnesses against them, to offer testimony, and to be represented by counsel". The

voluntary appearance of these Petitioners in open court and hearing repeatedly the charges made against them by a score of witnesses gave them "reasonable notice of the charge against them". Their production of a score of witnesses to deny, explain, or justify their conduct and their spending an aggregate of six or seven days on the witness stand among them—gave them full and ample "opportunity to be heard in their defense". Thus it is submitted, Petitioners have been given every possible "reasonable opportunity to defend themselves against the charges", which the United States Supreme Court outlined in the quotation above cited from 333 *U. S. at page 273.*

QUESTION V

Framed by Petitioners

The "issue" raised in Question V of Petitioners' Brief, and the "argument" drawn therefrom, is hardly worthy of the name; certainly, Petitioners cannot be serious in propounding such a theory! No authorities are cited and needless to say, Petitioners can find none! This "issue" and "argument" it is respectfully submitted, shows the glaringly vexatious and delaying nature of this entire proceeding. The mere statement that a principal cannot be adjudged guilty of contempt simply because of the alleged —but certainly not proved contention that his agents and servants were not punished because of an alleged failure to obtain jurisdiction of the court over them individually, where, nevertheless the court had obtained full and perfect jurisdiction of the Master is certainly untenable.

In this proceeding, the trial court has found more than ample cause to find the defendant unions guilty of contempt for the lawless and contemptuous conduct of their officers, business agents, servants, pickets and picket captains. The Supreme Court cannot disturb the findings of the trial judge on certiorari. *In re Gilliland*, 284 Mich. 604, at page 612, this Honorable Court, speaking through Justice Butzel, said:

> "On certiorari we do not pass on the weight of the evidence or the credibility of the witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari. *Re Simons*, 248 Mich. 297."

QUESTION VI

Framed by Petitioners

It is respectfully submitted that the heading of Question VI in Petitioners' Brief, which apparently refers to the refusal of the trial court to strike out certain testimony, without there being one word in the record or in this question to connect it up with the matters set forth in Question VII, is but proof again of the vexatious and delaying nature of this proceeding by the Petitioners. It is submitted there is no relationship of the remotest kind with the heading of Question VI and anything else that appears in this entire record or Brief as appertaining to the question of picketing as an expression of free speech.

QUESTION VII

Framed by Petitioners

The petition and Order to Show Cause in this case, in addition to citing the Petitioners for contempt of court, ordered the defendant unions to show cause why the original injunction should not be amended to prohibit picketing altogether of plaintiff's place of business, in view of the continued and continuous illegal conduct, consisting of ridicule, intimidation, threats, coercion, lawlessness, violence, terrorism, damaging and destruction of the property of the plaintiff, its employees, customers and suppliers, and secondary boycotts, by the defendant unions, their officers, agents, pickets, picket captains and confederates, in spite of specific prohibitions thereof contained in the original injunction.

Throughout the weeks of testimony adduced from the witness stand by the scores of witnesses and even by the testimony of the witnesses for the defendants themselves —it was so overwhelmingly apparent that the defendant unions had made a sham and a travesty upon the terms "peaceful picketing" and the trial judge stated in his opinion (Exhibit I attached to Petition herein) that the continued acts of ridicule, intimidation, coercion, threats, vandalism, and violence,

> "finally reached a crescendo on the night of September 4th when hundreds of persons descended upon the premises among them 16 to 18 individuals equipped with steel helmets, resulting in the throwing of the so-called paint bombs referred to and the steel pellets and other conduct of an unseemly nature * * *."

and where the court, in his opinion, detailed how he had taken painstaking concern and precaution in his original injunction, to insure peaceful picketing, stated in his opinion (Exhibit I attached to the Petition herein):

> "How peaceful this became and what regard the defendants and others associated with them had for the court's injunction, is evidenced from the fact of the number of police required from time to time at the scene to maintain order."

The court's opinion further say:

> "This court is further satisfied from the record as made that, without the constant attendance of practically the full complement of police from the Schaefer Precinct Station, peaceful picketing is out of the question."

The court went on to say that he concludes and orders all pickets, business agents, and any other persons or unions to remove themselves "forthwith" from the location of plaintiff's business and desist from any picketing or other activity tending to interfere with the conduct of plaintiff's business.

In addition to this, the court stated in open court, on December 6, 1951, at the time of rendering his written opinion:

> "I am satisfied that without an army of police the peaceful picketing cannot progress." (Exhibit IV attached to plaintiff's answer to Petition.)

In his formal order, entered December 19, 1951 (Exhibit "J" of the Petition) the court stated:

> "The court is further satisfied, from the record as made, that without the constant attendance of

practically the full complement of Police from Schaefer Precinct Station, peacefully picketing of plaintiff's place of business and premises is out of the question and cannot progress; therefore, this court CONCLUDES AND HEREBY ORDERS all pickets, business agents, legal advisers and any other person or persons, union or unions, to remove themselves FORTHWITH, to-wit: INSTANTER, from the location of the plaintiff's place of business as set forth in the Bill of Complaint, and to CEASE AND DESIST from any picketing or other activity whatsoever tending to interfere in any manner directly or indirectly with the conduct of plaintiff's business or with any of plaintiff's employees, suppliers or customers, or any other person having lawful business with said plaintiff."

Therefore, it is respectfully submitted that after listening to voluminous testimony over a period extending from September 27 through November 27, 1951, the court finds as a *FACT* that because of the continued and continuous acts of lawlessness and violence, peaceful picketing cannot be conducted without "an army of police" or in other words, "practically the full complement of police of the Schaefer Precinct Station of the City of Detroit." For that reason he ordered picketing to cease instanter, and, let me add, after the lawlessness and violence practiced by the defendants, their officers, agents, employees, pickets and confederates had put plaintiff practically out of business! It was no "episodic" and "isolated" incident, but a continued, continuous, calculated campaign on the part of defendant unions to intimidate and terrorize plaintiff, its employees, customers and suppliers.

In the case of *Gompers v. Buck's Stove & R Co.*, 221 U. S. 418, cited by the Petitioners, Justice Lamar said (after stating that it was lawful to form unions for legitimate purposes) at page 439:

> "But the very fact it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power when unlawfully used against one cannot be met, except by purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

Justice Lamar also says:

> "The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained."

As in the court below, Petitioners argue that since picketing has been regarded and approved as a form of free speech that right must be protected irrespective of any other rights also protected by the Constitution. The mere statement of this proposition shows it utterly ridiculous fallacy.

Petitioners quote and rely on *Thornhill v. Alabama*, 310 U. S. 88, and *Carlson v. Calif.*, 310 U. S. 106. In both of these cases the only picketing which was permitted was PEACEFUL PICKETING. In view of the court's findings below that the defendants indulged in continued and continuous violence and that the only way peaceful picketing could possibly continue was by the constant presence of an army of police, these two cases absolutely support the contention of the plaintiff and are not authority for the contention of the Petitioners.

The attenetion of this Honorable Court is called again to the case of *Gilliland*, 284 Mich. 604, at page 612, where this Honorable Court said:

> " 'On certiorari we do not pass on the weight of the evidence or the credibility of witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari.' *In re Simmons*, 248 Mich. 297."

The court below had presented from the witness stand mountains of evidence of the continued and continuous lawlessness and violence with which these Petitioners conducted the picketing at plaintiff's place of business and has made a finding which it is respectfully submitted this Court cannot disturb in this proceeding on certiorari.

In the case of *Meadowmoor Dairies v. Milk Wagon Drivers Union*, 312 A. L. R. 1200, even if the dissenting opinion of Justice Black said the right of the Illinois courts to enjoin violence is not denied in this case. The majority opinion written by Justice Frankfurter said:

> "We do not qualify the Thornhill and Carlson decisions. We affirm them. They involved statutes baldly prohibited all picketing near an employer's place of business. Entanglements with *violence* was *expressly out* of those cases. The statutes had to be dealt with on their face, and, therefore, we struck them down. Such an unlimited ban on free communication declared as the law of a state by a state court enjoys no greater protection here. * * *
>
> "But just as a state, through its legislature, may deal with specific circumstances menacing the peace by an appropriately drawn act (*Thornhill v. Alabama*, 310 U. S. 88) so the law of a state may be fitted to a concrete situation through the authority

given by the state to its courts. This is precisely the kind of situation which the Thornhill opinion *excluded* from its scope."

Then, Justice Frankfurter quoted from the Thornhill case:

> " 'We are not now concerned with picketing *en masse* or otherwise conducted which might occasion such imminent and aggravated danger * * * so as to justify a statute narrowly drawn to cover the preise situation giving rise to the danger.' "

In the Carlson case the United States Supreme Court said:

> "The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents cannot be doubted."

Justice Frankfurter in the Meadowmoor case further said:

> "We would not strike out a statute which authorized the courts of Illinois to prohibit picketing when *THEY SHOULD FIND THAT VIOLENCE HAD GIVEN TO THE PICKETING A COERCIVE EFFECT WHEREBY IT WOULD OPERATE DESTRUCTIVELY AS FORCE AND INTIMIDATION.* Such a situation is presented by this record." (Emphasis in type and italics ours.)

Justice Frankfurter further says:

> "Freedom of speech and freedom of the press cannot be too often invoked as basic to our scheme of society. But these liberties will not be advanced or even maintained by the denying to the states with all their resources, *including the instrumentality of*

their courts the power to deal with coercion due to excessive violence. * * * (Italicizing ours.)

"If the people of Illinois desire to withdraw the use of the injunction in labor controversies, the democratic process for legislative reform is at their disposal. On the other hand, if they choose to leave their courts with the power which they have historically exercised, within the circumscribed limits, which this opinion defines, and we deny them that instrument of government, that power has been taken from them permanently. Just because these industrial conflicts raise difficulties, it is most important for us not to intrude into the realm of policy-making by reading our own notions into the Constitution."

The most pertinent paragraph of the decision in the Meadowmoor case reads as follows:

"And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though peaceful picketing might be wholly peaceful."

In the case at Bar the evidence and proofs went further, to-wit: that the police department of the City of Detroit found it necessary, after the violence and terrorism had reached the crescendo described by the trial judge, to maintain "practically the entire complement of police of the Schaefer Precinct Station," to keep order on the part of the defendant unions, their agents, pickets and confederates.

The attention of this Honorable Court is further drawn to *Goldfinger v. Feintuch*, 276 N. Y. 281, 11 N. E. 2d 910, 116 A. L. R. 477, which is to the like effect as the Meadowmoor case; *Fashion Craft v. Halpern*, 48 N. E. 2d page 1 (Mass.); *Retail Clerks Union v. Wisconsin Employment Relations Board*, 6 N. W. 2d 698, 149 A. L. R. 452; *Harper v. Brennan*, 311 Mich. 489,

the latter quoting from the United States Supreme Court that:

> "A state is not required to tolerate in all places and circumstances even peaceful picketing by an individual." (*The Wohl Case*, 316 U. S. 769.)

It is therefore respectfully submitted that in view of the findings of fact based upon testimony, declared by the trial judge, namely, that peaceful picketing is impossible without an army of police, this Honorable Court should dismiss this application for Writ of Certiorari as it is so obviously vexatious and for the purpose of delay.

It is further respectfully submitted that the stay of proceedings of that portion of Judge Moynihan's order denying stay of proceedings as far as resumption of picketing is concerned should be set aside by this Honorable Court in view of this Court's frequent pronouncements that it will not deny temporary injunctive relief to a plaintiff where it is so obvious that plaintiff's business will be irreparably damaged (*Midwest Properties Co. v. Local 622 A. F. L.*, 330 Mich. 478; and other recent Michigan cases of like import)—as it has been in this case, by the conduct and violence perpertrated by defendant union. A fortiori, where the trial court has taken volumes of testimony and has concluded and found as a fact that the con-

duct of defendant unions is not peaceful picketing but is on the contrary lawless and uncontrolled violence which only an army of police could subdue.

Respectfully submitted,

GEORGE BASHARA (SGD),
3302 Cadillac Tower,
Detroit 26, Michigan.

Dated at Detroit, Michigan, January 7, 1952.

CERTIFICATION

I, the undersigned, Clerk of the Circuit Court for the County of Wayne, in response to a written request filed by counsel for defendants and petitioners in the United States Supreme Court for certiorari do hereby certify that the foregoing is a true copy of the memorandum brief in support of petition for writ of certiorari in the Michigan Supreme Court and also a true copy of the brief filed in opposition to the petition for certiorari in the Michigan Supreme Court, the Highest Court of this state, and that said briefs were returned to the records and files of this court after the denial of certiorari. That nine (9) similar copies of the briefs filed in support and in opposition to the petition for certiorari in the Michigan Supreme Court have likewise been compared and delivered to counsel for petitioners in the United States Supreme Court.

Edgar M. Branigin,
Clerk of the Court.

CERTIFIED COPY "CHANCERY"

State of Michigan,
County of Wayne—ss.

I, Edgar Branigin, Clerk of the Circuit Court for the County of Wayne in Chancery, do hereby certify, that the above and foregoing is a true and correct copy of Certification of Briefs filed by Plaintiff and Defendant on Petition for Certiorari to the Supreme Court of State of Michigan entered in the above entitled cause by said Court, as appears of record in my office. That I have compared the same with the original, and it in a true transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 25th day of June, A. D. 1952.

Edgar M. Branigin,
Clerk,
Leo K. Pierce,
Deputy Clerk.

Fee, $ .25
(Seal)